In the Supreme Court of the United States

OCTOBER TERM, 1964

No. 484

LAARS ENGINEERS, INC., PETITIONER

v.

NATIONAL LABOR RELATIONS BOARD

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF FOR THE NATIONAL LABOR RELATIONS BOARD IN OPPOSITION

OPINIONS BELOW

The opinion of the court of appeals is reported at 332 F. 2d 664 (Pet. A-1-A-9). The Board's decision and order (R. 28-29, 15-25)[1] are reported at 142 NLRB 1341.

---

[1] "R." refers to the pleadings, decision and order of the Board, and other papers reproduced as "Volume I, Pleadings" in the court below; "Tr." refers to portions of the transcript of testimony reproduced pursuant to Rules 10 and 17 of the court below; and "G.C. Ex." refers to exhibits of the General Counsel.

JURISDICTION

The decision of the court of appeals was rendered on June 8, 1964, and its decree was entered on August 4, 1964 (Pet. A-1, B-1, B-2). On September 9, 1964, Mr. Justice Stewart extended the time for filing a petition for a writ of certiorari to and including September 18, 1964, and the petition was filed on September 11, 1964. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTION PRESENTED

Whether substantial evidence supports the finding of the National Labor Relations Board that petitioner violated Section 8(a)(1) of the National Labor Relations Act by granting a wage increase at a particular time in order to induce its employees not to support the organizational efforts of the Union.

STATUTE INVOLVED

The relevant statutory provisions are set forth in Appendix C to the petition.

STATEMENT

Petitioner employs approximately 65 persons whose work is subject to overall supervision by its president, Avy L. Miller. It is petitioner's practice to review wages about once a year and to "match * * * or better" wage increases given "generally, and particularly in our industry" (R. 16; Tr. 12).

Petitioner meets occasionally with an Employees' Committee, consisting of one representative from

each of its three production departments. On July 24, 1962, President Miller and General Manager Clark met with the three employee representatives, who said they had read about wage increases at other plants and "felt that an increase was overdue." The management representatives said Clark would make a comparative wage survey among petitioner's competitors and, if an adjustment was indicated, would match or better "the industry's increases" (R. 16-17; Tr. 7-8, 11-12, 32).

On July 30, 1962, toward the end of the work shift, two representatives of the International Association of Machinists stationed themselves at the two parking lot entrances to the plant,[2] and gave the employees a kit as they left the premises. The kit included a folder and a card designating the Union as the signatory's bargaining representative. The folder included information on employees' rights under the Act, described the advantages of unionization, and requested the recipient to sign the card and mail it to the Union (R. 17; Tr. 20-21, G.C. Exh. 3A, 3B, 3C). The plant doorway was open at the time the kits were distributed and there was no obstruction to visibility between the doorway and the parking lot entrances (R. 17; Tr. 22).

On August 8, 1962, President Miller told the Employees' Committee that all production and mainte-

---

[2] Petitioner's facilties include a parking lot which is separated from the manufacturing plant by a driveway. The lot has two entrances, about 60 to 75 feet apart. Both entrances are plainly visible from the plant doorway (R. 16; Tr. 6-7, 21-22).

nance employees were being given a five percent wage increase, which "would be adjusted upward, if necessary, but not downward" upon completion of the comparative wage survey by Plant Manager Clark who was then on vacation. The increase was put into effect the same day (R. 17; Tr. 9).

The Board found that petitioner had granted the wage increase on August 8 "to deflect the interest of its employees from the Union's organizational efforts," and thereby violated Section 8(a)(1) of the Act (R. 18-20, 28).[3] The Board's order (R. 22-23, 28) required petitioner to cease and desist from the unfair labor practice found and from in any like or related manner infringing upon its employees' rights under the Act, and to post an appropriate notice.

The court of appeals held that the evidence supporting the Board's finding that petitioner had granted the wage increase at the particular time for the purpose of thwarting the organizational efforts of the Union "is substantial when viewed in the light that the record in its entirety furnishes" (Pet. A-8), and enforced the Board's order in this respect.

ARGUMENT

This Court held in *National Labor Relations Board* v. *Exchange Parts Co.*, 375 U.S. 405, 409-410, that

---

[3] The court below rejected the Board's further finding that, prior to a Board election, the Company had unlawfully promised its employees additional economic benefits to induce them to vote against the Union. That issue is not involved in this proceeding.

an employer violates Section 8(a)(1) of the Act if he grants economic benefits for the purpose of inducing his employees to reject a union organizing effort. Petitioner's sole contention is that the record does not support the Board's findings, sustained by the court of appeals, that it knew the Union was organizing its employees and that it accelerated a wage increase to influence them not to support the Union (Pet. 7-8, 12). An evidentiary issue of this kind, turning, as it does, only on the specific circumstances of this particular case, plainly does not warrant review by this Court. *Universal Camera Corp.* v. *National Labor Relations Board*, 340 U.S. 474, 491.

In any event, the record supports the Board's finding. As noted by the court of appeals (Pet. A-6-A-8), petitioner departed from past practice in giving an "interim" wage increase on August 8, 1962, before completion of a wage survey; the wage increase closely coincided with the Union's organizing activity; and, although President Miller denied seeing the distribution of the kits at the parking lot on July 30, 1962, he testified that this organizing activity came to his attention sometime after July 30, 1962.[4] From these circumstances, the Board was justified in concluding that the wage increase was given at the particular time for the purpose of inducing the employees to reject the Union.

---

[4] The testimony of Miller is summarized in the Trial Examiner's report, which the Board adopted. 142 NLRB 1341, 1345, n. 2, R. 20, n. 2; Tr. 61-63.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted,

ARCHIBALD COX,
Solicitor General.

ARNOLD ORDMAN,
General Counsel,

DOMINICK L. MANOLI,
Associate General Counsel,

NORTON J. COME,
Assistant General Counsel,

MELVIN POLLACK,
Attorney,

National Labor Relations Board.

OCTOBER 1964

U. S. GOVERNMENT PRINTING OFFICE: 1964 747509 313